

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MATTHEW GIBSON,

Plaintiff,

v.

**Civil Action No. 5:21-cv-00181
Honorable Frank W. Volk**

**LOUISE E. GOLDSTON, individually,
COUNTY COMMISSION OF RALEIGH
COUNTY, a political subdivision, JEFF
MCPEAKE, individually, BRIAN WHITE,
individually, BOBBY STUMP, individually,**

Defendants.

DEFENDANT LOUISE E. GOLDSTON’S NOTICE OF NON-PARTY FAULT

COMES NOW this Defendant, Louise E. Goldston, by counsel Jennifer E. Tully, Adam K. Strider, and the law firm of Bailey & Wyant, PLLC, and pursuant to W. Va. Code § 55-7-13d(a), and based in pertinent part upon deposition testimony given by Plaintiff Matthew Gibson on February 23, 2022, gives notice that the following non-parties may be wholly or partly at fault for the Plaintiff’s alleged damages in this case:

John H. Bryan, Esq.
P. O. Box 366
Union, WV 24983
(304) 772-4999

In his deposition, Plaintiff Matthew Gibson testified that the anxiety and emotional distress he claims to have incurred as a result of the incident in question stemmed from the video of the events in the case going “viral,” and him receiving attendant negative attention from the wide distribution of the video:

Q. Okay. And you are saying your anxiety came from the video going viral?

A. Sure. Because at this point, everybody is looking at you whether you are guilty or not guilty. This went on for two years.

Exhibit 1, *Depo. of Matthew Gibson* at Pg. 168, Lines 14-19. However, he also conceded that it was his own attorney, Mr. Bryan, who caused the widespread public distribution – and therefore caused his attendant anxiety – by posting the video online and providing it to news media:

Q. I believe they have showed the video on the news; is that correct?

A. They have, right.

Q. How did they obtain the video that your girlfriend took?

THE WITNESS: I believe I give it to you, John, right?

LOUISE GOLDSTON: You can't -- the judge in me. I'm sorry.

MR. BRYAN: Don't testify as to, you know, our confidential communications. But if you recall how the news ended up with the video, then you can answer the question. You don't have to say anything we've discussed.

A. So by that time, I done retained Mr. Bryan. And I am assuming Mr. Bryan turned it over to the news station.

[...]

Q. All right. To have this shown on the news and to have this video on YouTube for anybody and everybody to see, has that caused you any kind of anxiety or emotional distress?

A. Absolutely.

Q. But that was something done by you and your attorney; is that correct?

A. Yes.

[...]

Q. Okay. I'm sorry. It looks like you went there – it says, Things are pretty

crazy right now. I had a video go viral about some legal things going on from him in his divorce. Now, none of the defendants in this case posted that video online, did they?

A. No.

Q. Okay. That video was posted by who? Your attorney?

A. Yes, sir.

Id. at Pg. 53, Line 17 – Pg. 54, Line 10; Pg. 54, Line 18 – Pg. 55, Line 2; Pg. 168, Lines 3-18.

The Plaintiff's deposition testimony indicates that at least a portion of the emotional distress he claims to suffer is derived from the publicity the video of the events received, rather than from the events themselves. Because he also testified that it was his own attorney who caused this publicity to occur, Mr. Bryan should appear on the verdict form so that the jury may assign him a share of responsibility for the Plaintiff's damages as a non-party.

LOUISE E. GOLDSTON,
By Counsel,

/s/ Jennifer E. Tully
Jennifer E. Tully (WV Bar #9356)
Adam K. Strider (WV Bar #12483)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
jtully@baileywyant.com
astrider@baileywyant.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MATTHEW GIBSON,

Plaintiff,

v.

**Civil Action No. 5:21-cv-00181
Honorable Frank W. Volk**

**LOUISE E. GOLDSTON, individually,
COUNTY COMMISSION OF RALEIGH
COUNTY, a political subdivision, JEFF
MCPEAKE, individually, BRIAN WHITE,
individually, BOBBY STUMP,
individually,**

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**DEFENDANT LOUISE E. GOLDSTON’S NOTICE OF NON-PARTY FAULT**” was served upon the following parties through the Court’s Electronic Case Filing (ECF) system on this day, June 02, 2022:

J Arie M. Spitz
Kevin A. Nelson
Jason L. Holliday
Dinsmore & Shohl, LLP
P.O. Box 11887
707 Virginia Street East, Suite 1300
Charleston, WV 25339-1887
Attorney For: Kyle Lusk

J. Victor Flanagan
Kevin J. Robinson
Pullin Fowler Flanagan Brown & Poe, PLLC
252 George Street
Beckley, WV 25801
Attorney For: Bobby Stump, Brian White, Jeff McPeake

John H. Bryan
Law Office of John H. Bryan
PO Box 366
Union, WV 24983
Attorney For: Matthew Gibson

/s/ Jennifer E. Tully

Jennifer E. Tully (WV Bar #9356)
Adam K. Strider (WV Bar #12483)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
jtully@baileywyant.com
astrider@baileywyant.com